

ORIGINAL

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----X  
4 BENJAMIN CASH, ELIZABETH CATLIN, JENNIFER KLEIN and  
5 MARK KUSHNEIR,  
6  
7 PLAINTIFFS,  
8  
9  
10 -against- Case No.:  
11 14-CV-9148  
12 THE CITY OF NEW YORK, et al,  
13  
14 DEFENDANT.  
15 -----X  
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DATE: August 10, 2017

TIME: 11:01 A.M.

DEPOSITION of the Plaintiff, MARK  
KUSHNEIR, taken by the Defendant, pursuant to a Notice and  
to the Federal Rules of Civil Procedure, held at the  
offices of the New York City Law Department, 100 Church  
Street, New York, New York 10007, before Jasmin Omozusi, a  
Notary Public of the State of New York.

1     A P P E A R A N C E S:

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7         BY: GIDEON ORION OLIVER, ESQ.

6

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14         File #: 2015-009624  
15         Control #: 166771

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## 1           F E D E R A L   S T I P U L A T I O N S

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4           IT IS HEREBY STIPULATED AND AGREED by and between  
5 the counsel for the respective parties herein that the  
6 sealing, filing and certification of the within deposition  
7 be waived; that the original of the deposition may be  
8 signed and sworn to by the witness before anyone authorized  
9 to administer an oath, with the same effect as if signed  
10 before a Judge of the Court; that an unsigned copy of the  
11 deposition may be used with the same force and effect as if  
12 signed by the witness, 30 days after service of the  
13 original & 1 copy of same upon counsel for the witness.

14

15           IT IS FURTHER STIPULATED AND AGREED that all  
16 objections except as to form, are reserved to the time of  
17 trial.

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M. KUSHNEIR

1       A.       It had to have been few months, maybe six months,  
2       maybe five months.

3       Q.       Were you a member of that group on the date of  
4       incident?

5       A.       Yes.

6       Q.       And going to the date of incident, November 17th,  
7       how would you characterize the event of that day?

8               MR. OLIVER: Objection. You can answer.

9       A.       Beginning from when?

10      Q.       You went to the Occupy Wall Street area on  
11      November 17, 2011, correct?

12              MR. OLIVER: Objection. You can answer.

13      A.       Yes.

14      Q.       And when did you arrive in that area that day?

15              MR. OLIVER: Objection. You can answer.

16      A.       It was very early because I rode my bicycle over  
17      the Brooklyn Bridge. It must have been 6:30 in the  
18      morning, something like that.

19      Q.       Where were you when you first arrived in the  
20      Occupy Wall Street area?

21      A.       I parked my bike kind of, you know, closer toward  
22      the bridge, I can't remember what street it was on. And  
23      then walked down towards Broadway and, which was, if you're  
24      facing Broadway and looking north, it's on the right side,  
25      meaning it's across from Saucony Brown. I think there's a

M. KUSHNEIR

1 Brown Brothers building there or Citibank. I can't  
2 remember which one.

3 Q. And did you stay in that area the Brown Brothers  
4 building, how long did you stay there?

5 MR. OLIVER: Objection. You can answer.

6 A. Couldn't have been more than 20 minutes,  
7 half-hour.

8 Q. And what caused you to go to the Wall Street area  
9 on that day?

10 A. It was the, there was a call put out for a day of  
11 protest and myself and a friend from, you know, from grad  
12 school decided to go and participate. We were going to put  
13 on many performances of homes being foreclosed upon and  
14 reading off statistics related to home foreclosures, and  
15 the predatory nature of the lending kind of the  
16 exploitation of that crisis by particular hedge funds on  
17 Wall Street. So we had props set up and we were going to  
18 kind of bounce around the area.

19 Q. And what kind of props did you have with you?

20 A. We had images of foreclosed-upon homes. So there  
21 would be shuttered or kind of, you know.

22 Q. Cardboard houses, would you say?

23 A. Yes.

24 Q. And any other props that you had with you?

25 A. Not that I can remember, no.

M. KUSHNEIR

1 Q. And did other people bring their cardboard houses  
2 with them?

3 MR. OLIVER: Objection. You can answer.

4 A. They were built by my friend who was in grad  
5 school with me. So he brought them and asked if I wanted  
6 carry one and help, I said sure.

7 Q. So you shlepped across the Brooklyn Bridge with a  
8 bunch of cardboard houses?

9 A. I didn't. He must have taken the train. I was  
10 on my bicycle, there was no way.

11 Q. And what was your purpose in attending the event  
12 of that day?

13 MR. OLIVER: Objection. You can answer.

14 A. Meaning, why did I feel compelled to go and  
15 attend?

16 Q. Yes.

17 A. I just felt that understanding, as best as I  
18 could, how the financial system worked, that it was  
19 responsible for the destruction of the quality of lives for  
20 millions upon millions of people. And that the people who  
21 were suffering the most were feeling the brunt of that  
22 crisis; meaning people who were least able to suffer the  
23 most were able to suffer the brunt of the crisis and the  
24 people who were most well-off, in some cases were actually  
25 able to benefit from it, who were able to acquire

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1 speculative hopes for pennies on the dollar for what their  
2 actual present value was. And that made me very upset and  
3 I didn't think that was just and correct that people were  
4 getting away with, you know, a very serious crime.

5 Q. Did you take part in organizing the event of that  
6 day at all?

7 A. No..

8 Q. Did you attend any meetings pertaining to the  
9 organization of any of the events that day?

10 A. Yes.

11 Q. And what meetings did you attend?

12 A. From what I can remember, there was one meeting.  
13 I think that's the only meeting that I attended that  
14 involved a kind of larger, you know, that had a large  
15 number of people there that were kind of laying out what  
16 they thought should go on that day.

17 Q. And what was discussed at that meeting?

18 A. Just what people thought should be done that day.  
19 It wasn't anything that seemed incredibly coherent as to  
20 what X is going to do or what Y is responsible for or  
21 anything like that. It just seemed like pretty much a  
22 cacophony of opinions.

23 Q. And can you tell me what some of the topics were  
24 that were discussed at that meeting, of plans of what they  
25 wanted to do or anything along those lines?

M. KUSHNEIR

1 MR. OLIVER: Objection. You can answer.

2 A. I think there was, what I remember the most was  
3 there was a group that was asking for volunteers who had  
4 any medical experience, particularly with the history of  
5 pepper spraying and fires, that they were going to be other  
6 kind of devices deployed by NYPD, like with the sound  
7 cannons or anything of that nature or, you know. Of  
8 course, that's the thing that stuck out in my mind the  
9 most.

10 Q. Were there any discussions of shutting down Wall  
11 Street?

12 A. I mean that was pretty much of the rhetoric  
13 throughout most of Occupy Wall Street, so to speak.

14 Q. And would you say that the intention of the group  
15 on this day was to shut down Occupy Wall Street?

16 MR. OLIVER: Objection. You can answer if  
17 you know.

18 A. I mean, I mean, do you mean like people at that  
19 meeting that you're saying?

20 Q. Yes.

21 A. I mean I couldn't say what there intent was.

22 Q. Were there discussions about shutting down Wall  
23 Street?

24 A. I mean, there were theoretical discussions about  
25 shutting down Wall Street in the sense of what Wall Street



M. KUSHNEIR

1 MR. OLIVER: Objection. You can answer.

2 A. I mean, I was in a group of people.

3 Q. And how many people would you say were in that  
4 group?

5 A. Oh, there could have been, I was at, I was all  
6 the way in the front, so maybe if I guess behind me, there  
7 could have been anywhere from 50 to 200 people because like  
8 I said, there was everyone was behind me, so I don't.

9 Q. Understood.

10 You were in the front of that group?

11 A. Yes, I was.

12 Q. So when you arrived at that location on Broadway,  
13 the location where you were arrested, what were you doing  
14 just prior to your arrest?

15 MR. OLIVER: Objection. You can answer.

16 A. Walking.

17 Q. You were walking on the sidewalk or the street?

18 A. Walking on the sidewalk, you couldn't go into the  
19 street.

20 Q. And why couldn't you go into the street?

21 A. Because it was all barricaded off.

22 Q. You testified a second ago that you came up  
23 against police officers at some point prior to your arrest;  
24 is that correct?

25 MR. OLIVER: Objection. You can answer.

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1 A. Yes, there was no going through them.

2 Q. And how many police officers do you think there  
3 were?

4 A. It could have been 20 or so.

5 Q. And did you yourself have any conversations with  
6 any police officers on that day prior to your arrest?

7 A. No.

8 Q. And you mentioned earlier that people were  
9 standing around watching.

10 What were they watching, do you know?

11 A. They were watching us standing there with our  
12 props and demonstrating, chanting.

13 Q. You were chanting or they were chanting?

14 A. No, we were chanting. These were people that  
15 looked like they were going to work, you know, south of  
16 where we were confronted by police officers. People were  
17 just walking around, some were protestors, some were just  
18 on their way to work and they curse at you. Some people  
19 would respond positively toward you, but it was a much  
20 freer flow of activities, very different than when we made  
21 the turn on Broadway to go north, where it was just total  
22 like you were being funneled toward something.

23 Q. Did you walk with your cardboard boxes?

24 A. Yes.

25 MR. OLIVER: Objection.

M. KUSHNEIR

1 Q. With your cardboard houses.

2 Where did you start with the cardboard houses?

3 We know where you ended up, where did you start, were you  
4 marching with the cardboard houses?

5 A. Yes.

6 MR. OLIVER: Objection. You can answer.

7 Q. Where did that march with the houses start?

8 A. All the way back at the Brown Brothers building.

9 Q. During the march between the Brown Brothers  
10 building to where you eventually were arrested, did you  
11 hear any police orders at that time or police orders being  
12 given?

13 MR. OLIVER: Objection. You can answer.

14 A. At various points, there were crowds of people  
15 who were being ordered to move or disperse, you know.

16 Q. So at some point during the march, you heard  
17 police officers telling other people to move?

18 A. Correct.

19 Q. And prior to your arrest, were any orders given  
20 by police to the crowd that you were in?

21 MR. OLIVER: Objection. You can answer.

22 A. Nothing that was intelligible, no.

23 Q. So you think that the police were giving orders  
24 but you couldn't tell what they were?

25 MR. OLIVER: Objection. You can answer.

M. KUSHNEIR

1       A.       Chief Esposito was right in front of me. It was  
2       garbled at best.

3       Q.       And how do you know Chief Esposito?

4       A.       I don't know him personally.

5       Q.       Did you know who he was on that day?

6       A.       I don't think so, no, not that he was chief. I  
7       just knew that his badge said Esposito on it.

8       Q.       And did you hear, at any time Chief Esposito  
9       giving orders to the crowd that you were in?

10               MR. OLIVER: Objection. You can answer.

11       A.       I remember him yelling, he was yelling something,  
12       he was yelling. I don't know if he was yelling to move or  
13       if he was yelling saying that you have five seconds. He  
14       was putting his hands, I remember he was right in front of  
15       me and he reached past me to go grab somebody, and like  
16       shoved me aside, and he yelled something like that.

17               But it was a matter of like five seconds between  
18       him having his hands cupped like that, trying to yell  
19       orders. I don't know if they were at us or if it was at  
20       his officers.

21               And the next thing I know, I'm being arrested.  
22       I'm up against the bank and the cops are running past me.  
23       I just dropped everything, I just moved against the wall  
24       and I'm being cuffed.

25       Q.       If you hadn't been arrested at that time, what

M. KUSHNEIR

1 were your plans for the rest of the day?

2 A. To keep marching and eventually go home, so I can  
3 sleep in my own bed.

4 Q. Had you not been arrested, had you planned to  
5 engage in any planned events on that day?

6 MR. OLIVER: Objection. You can answer.

7 A. As far as I know, that was the only thing that  
8 was planned, just to perpetually keep marching around.

9 Q. And you mentioned earlier something about doing  
10 skits, what were you doing exactly with the cardboard  
11 houses?

12 A. Just holding it, chanting, you know, just props.

13 Q. So the skit was just chanting with the cardboard  
14 housing?

15 A. Chanting and the intent was reading out the  
16 different statistics and do the usual kind of chants. I  
17 can't remember what they are.

18 Q. Do you remember what time you were arrested?

19 A. It had to be early in the morning, because people  
20 still seemed like they were all going to work. So it had  
21 to have been close to nine.

22 Q. And you were arrested on the sidewalk, correct?

23 A. Yep.

24 Q. And were pedestrians able to get past you on the  
25 sidewalk?

M. KUSHNEIR

1 sidewalk where you and the group were with the cardboard  
2 houses, would they have been able to traverse the sidewalk?

3 MR. OLIVER: Objection.

4 A. Where we were earlier?

5 Q. Where you were arrested?

6 MR. OLIVER: Objection.

7 A. Could you say that again.

8 Q. Sure.

9 The location where you were arrested with the  
10 group with the cardboard houses, would any pedestrian have  
11 been able to get past you on the sidewalk?

12 MR. OLIVER: Objection, again. You can  
13 answer.

14 A. I mean, they could have gotten through us. I  
15 don't know how they would have gotten over the barricades,  
16 past the police officers, past police vehicles and then  
17 gotten to us. That's the, you know, from where other  
18 pedestrians were, that's the trick they would have had to  
19 do.

20 Q. But you got there?

21 A. Sure, yeah.

22 Q. Did you intend to shut down Wall Street on  
23 11/17/2011?

24 MR. OLIVER: Objection. You can answer.

25 A. No, that would be impossible.

M. KUSHNEIR

1 Q. Did you intend on participating in that activity?

2 MR. OLIVER: Objection. You can answer.

3 A. I intended in participating in the process, yes.

4 Q. Did part of that protesting include blocking  
5 streets or sidewalks?

6 MR. OLIVER: Objection. You can answer.

7 A. I'm sure it did.

8 Q. And you were handcuffed, right?

9 A. Yes.

10 Q. And what kind of handcuffs were used?

11 A. These plastic zip ties.

12 Q. And were you told that you were being arrested?

13 A. Yes, I mean I think I eventually was. I don't  
14 recall entirely.

15 Q. What was said before you were arrested, what was  
16 said to you?

17 MR. OLIVER: Objection. You can answer.

18 A. I don't remember exactly. It had to have been,  
19 you know, I don't know exactly what he said.

20 Q. How long was Chief Esposito in front of the line  
21 of cardboard houses, do you recall, before you were  
22 arrested?

23 A. Esposito must have been front, he was in front of  
24 me for at least 15 seconds. It wasn't very long, it was  
25 15 seconds maybe.

M. KUSHNEIR

1 Q. And how long were you in police custody, if you  
2 recall, from the time of your arrest until your release?

3 A. It had to have been 17, 18 hours, I think.

4 Q. Did you sustain any physical injuries during your  
5 arrest?

6 A. No.

7 Q. So you didn't request any medical treatment in  
8 custody, correct?

9 A. Correct.

10 Q. And you did not seek any medical treatment post  
11 custody, correct?

12 A. Correct.

13 Q. And do you know what the disposition of that case  
14 was, the charges from November 17, 2011; was it dismissed,  
15 did you accept an ACD, did you plead guilty?

16 A. I didn't. I don't remember exactly what happened  
17 because it seemed very -- like just seemed very convoluted,  
18 the whole process. I just remember I had a court date, I  
19 appeared, (inaudible) was my attorney and I never, I never  
20 pleaded guilty but I don't remember if I took the AC -- you  
21 know, I just don't remember.

22 Q. So you made one appearance in court; is that  
23 correct?

24 A. As best I can remember, yeah.

25 Q. Did you sustain any emotional injury as a result



M. KUSHNEIR

1 of your arrest?

2 MR. OLIVER: Objection. You can answer.

3 A. Other than, you know, embarrassment and fear in  
4 the workplace because I had -- my intention was to go work  
5 as a caddy again at Baltusrol and participating in that  
6 kind of activity could have jeopardized my good standing  
7 there. So I definitely did not talk much about it.

8 Q. So aside from embarrassment, do you have any  
9 other emotional injuries with respect to your arrest?

10 MR. OLIVER: Objection. You can answer.

11 A. No.

12 Q. Did your arrest, in fact, impact on your job at  
13 all?

14 A. I was eventually confronted by the director of  
15 security at Baltusrol asking me, I don't know how he knew  
16 about this, because he was a former law enforcement person  
17 in Springfield, New Jersey, in that town where he asked me  
18 these very kind of nebulous like oh, what happened to you  
19 in New York or things of that nature. So I don't know how  
20 he of learned about that, and that kind of made me a little  
21 apprehensive and nervous in the workplace. But other than  
22 that --

23 Q. But you did keep the job?

24 A. Correct.

25 Q. And you didn't receive any treatment for

M. KUSHNEIR

1 emotional injury, correct?

2 A. Correct.

3 Q. Why did you decide to bring this lawsuit,

4 Mr. Kushneir?

5 A. Because I felt that I was wholly and entirely  
6 wronged by being arrested. I didn't deserve to be treated  
7 that way for engaging in a peaceful demonstration and  
8 protest.

9 Q. Have you taken part in any demonstration since  
10 your arrest?

11 A. Yes.

12 Q. And how many demonstrations or protests have you  
13 taken part in since your arrest?

14 A. One or two.

15 Q. And what did those demonstrations pertain to?

16 A. One was protesting the Ku Klux Klan in Durham,  
17 North Carolina and the other was, I think also in Durham,  
18 was like a fight for 15.

19 Q. What's fight for 15?

20 A. Minimum wage of \$15.

21 Q. On the date of incident, did you expect to get  
22 arrested that day?

23 A. No.

24 Q. So you didn't intend to get arrested that day?

25 A. No.

M. KUSHNEIR

## C E R T I F I C A T E

STATE OF NEW YORK        )  
                                  : SS.:  
COUNTY OF KINGS        )

I, JASMIN OMOZUSI, a Notary Public for and within  
the State of New York, do hereby certify:

That the witness whose examination is hereinbefore  
set forth was duly sworn and that such examination is a  
true record of the testimony given by that witness.

I further certify that I am not related to any of  
the parties to this action by blood or by marriage and that  
I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this  
13th day of August 2017.



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JASMIN OMOZUSI

